



**Business Law Reform and  
Alternative Dispute Resolution  
Development**

Under the USAID/Madagascar Legal, Regulatory and  
Judicial Reform Activity  
USAID contract No. 623-C-00-98-00029-00

**Madagascar Participation & Poverty (P&P) Project  
Legal, Regulatory, Judicial Reform Activity**

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**January 1, 2001 – March 31, 2001**

**Quarterly Performance Monitoring Report  
(Eleventh Quarter)**

**May 31, 2001**

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**MADAGASCAR PARTICIPATION & POVERTY (P&P) PROJECT  
LEGAL, REGULATORY, JUDICIAL REFORM ACTIVITY**

**Commercial Law Reform and  
Alternative Dispute Resolution Components**  
Contract No. 623-C-00-98-00029-00

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## TABLE OF CONTENTS

I.	CONTRACTOR’S REPORT .....	1
A.	NARRATIVE .....	1
	1. Background and Expected Results .....	1
	2. Eleventh Quarter Activities .....	1
	a. Creation of a Word-Searchable CD-ROM Compilation of Malagasy Laws .....	1
	b. Arbitration and Mediation Centre of Madagascar .....	2
	c. Training .....	2
	d. Project Manager Visit .....	3
	e. Milestone Completion .....	4
	3. Levels of Effort Provided per CLIN .....	4
	a. Eleventh Quarter .....	4
	b. Cumulative to Date (Quarters One through Eleven) .....	5
	4. Legislation Monitoring and Tracking Tables .....	5
	a. Status, Critical Dates and Events of Legislation Reviewed by ARD/Checchi ..	5
	b. Business Law Reforms and ARD/Checchi/JURECO Contributions .....	6
B.	FINANCIAL .....	9
II.	CTO’S COMMENTS .....	11
III.	CO’S COMMENTS .....	11



# **I. CONTRACTOR'S REPORT**

## **A. NARRATIVE**

### **1. Background and Expected Results**

Please refer to the Second Annual Report, Section I, which provides descriptions of the background of this contract, USAID/Madagascar's Strategic Objectives (SOs), and the Special Program Objective (SPO) *Improved Environment for Private Initiative*, under which the ARD/Checchi contract falls. The Second Annual Report also details the Mission's two Intermediate Results (IRs), five Sub-Intermediate Results (Sub-IRs), and the relationship of the contract to those results.

### **2. Eleventh Quarter Activities**

#### **a. Creation of a Word-Searchable CD-ROM Compilation of Malagasy Laws**

The ARD/Checchi international legal information systems expert, Pierre Babinsky, began his assignment to create a word-searchable CD-ROM compilation of Malagasy laws in September 2000. During that month, Mr. Babinsky received a copy of the non-searchable CD-ROM compilation prepared by USAID/Madagascar, analyzed the technical requirements for converting it into a word-searchable database, investigated possible search engines, and recommended the use of Adobe Acrobat, to be accessed by users with Adobe Acrobat Reader. USAID and the Ministry of Justice approved his recommendation, and Mr. Babinsky then converted the documents made available by USAID to Acrobat format (PDF).

Mr. Babinsky made two trips to Madagascar during the Tenth Quarter (October 9-28 and December 1-16), and worked on the database at his home in Montreal. In his first trip, Mr. Babinsky worked with the Ministry of Justice and other Malagasy entities in defining the contents of the CD-ROM (the laws should be contained in addition to the USAID compilation), verified versions of those laws, and negotiated preliminary arrangements for the production and distribution of the CD-ROM when completed. In his second trip, he again verified the CD-ROM with the Ministry of Justice and USAID, and worked further on the definition of the contents of it. He provided instruction and orientation on the use of the CD-ROM to the Ministry of Justice, the University of Antananarivo Law School, and other select government and private sector legal audiences. Mr. Babinsky also completed arrangements for producing 1,000 copies of the CD-ROM, for delivering, through JURECO, 350 of these copies to Ministry of Justice-designated government organizations and officials, and for offering the remaining 650 copies for sale to the public. He assisted in drafting a marketing strategy for presentation to and approval by USAID, and in drafting separate implementing contracts with the private firms selected to produce and market the CD-ROMs. Mr. Babinsky also organized a reception hosted by the Minister of Justice, and attended by the Mission Director, to mark the creation and imminent release of the CD-ROM.

The CD-ROM's official release and the commencement of distribution place February 12, 2001. JURECO distributed all 350 copies to the recipients named by the Ministry of Justice by early

March. As of March 31, 2001, our distributor, the *Centre malgache pour la promotion du livre* (CMPL) had sold approximately 350 copies of the CD-ROM to the public, all in Antananarivo, and the remaining copies were reserved for distribution elsewhere on the island. The Ministry of Justice has found numerous errors and omissions in the texts provided to ARD/Checchi, and the Ministry is currently engaged in correcting and/or creating these texts in Microsoft Word format. The Ministry has notified ARD/Checchi that it does not want a second production run of the current, flawed edition, and anticipates having a second edition ready for publication in December 2001. ARD/Checchi questions whether the Ministry has the technical ability to convert the new texts into PDF format and burn the next edition, and has recommended that Mr. Babinsky return to Madagascar before the end of our contract on September 30, 2001 for the purpose of training Ministry personnel.

**b. Arbitration and Mediation Centre of Madagascar**

Based on the grant application prepared by the *Centre d'Arbitrage et de Médiation de Madagascar* (CAMM), ARD/Checchi submitted a \$50,000 grant proposal to USAID. The purpose of the proposed grant is to meet the CAMM's operating expenses in its first year. Following negotiations, USAID approved the proposal on December 13, 2000, and the first tranche of the grant, amounting to \$25,000 to cover startup costs as well as normal operating expenses, was dispatched in January 2001. The CAMM located and rented office space on March 1, 2001, and moved into its new office on March 12. On March 15, the CAMM held a reception to mark its official installation at the Hilton Hotel for CAMM members, government officials, foreign dignitaries, representatives of relevant organizations, and business community leaders. By the end of March, the office was fully furnished and fully operational, with a full time staff of four (two assistants, a secretary and a guardian/cleaner) and the part-time services of the Secretary General.

The CAMM, as well as ARD/Checchi subcontractor JURECO, played a critical role in organizing and providing administrative support for the three training activities summarized in Section 2.c, below.

**c. Training**

In March 2001 ARD/Checchi and JURECO, in cooperation with the CAMM, and the ENMG, provided five days of intensive training in arbitration to future Malagasy arbitrators, five days of intensive training in mediation techniques to future Malagasy mediators, and a one day training session for commercial court judges on the role of the judge under the new Arbitration Law. A complete report on these training activities will be submitted in a separate memorandum.

**i. Intensive Training for Arbitrators**

From March 12 through 16, 2001, ARD/Checchi provided a five-day intensive training course in arbitration to 35 Malagasy participants. Professor Louis Marquis, Dean of the Faculty of Law of Sherbrooke University, Quebec, Canada, assisted by Mr. Howie Clavier and Professor Ratiaray RAMAROLANTO, led the training. At the conclusion of the course, CAMM Secretary General Raphaël Jakoba presented certificates accrediting the participants as arbitrators for the CAMM.

## **ii. Intensive Training for Mediators**

From March 12 through 16, 2001, ARD/Checchi provided a five-day intensive training course in arbitration to 35 Malagasy participants at the Madagascar Hilton Hotel. Mr. Howie Clavier, assisted by Mr. Jean Poitras, led the training. At the conclusion of the course, CAMM Secretary General Raphaël Jakoba presented certificates accrediting the participants as mediators for the CAMM.

## **iii. Training for Judges in the Role of the Judiciary under the Arbitration Law**

On March 19, 2001, ARD/Checchi provided a one-day workshop on the arbitration law to a group of 27 judges at the *Ecole nationale de la magistrature et des greffes*. Professor Marquis, who was scheduled to lead the training, fell ill and Professor RAMAROLANTO, assisted by Mr. Clavier and Mr. Jakoba, presented the materials prepared by Professor Marquis.

## **d. Project Manager Visit**

Project Manager Thomas R. Reynders visited Madagascar during the period March 2 through 21 to oversee arrangements for the training sessions, hold periodic administrative consultations with USAID and address specific contract questions. Among the subjects Mr. Reynders dealt with during his visit were:

*CD-ROM Issues*, as described above.

*Probable Legislative Activities at the May Session of the National Assembly.* The Ministry of Justice provided a summary of all CRDA efforts to date. The contents of this memorandum are summarized in Section 4.a.

*Additional Technical Assistance on Business Law Reform.* The Ministry of justice requested assistance in preparing the implementing decrees for the Companies Law, and after consultation with USAID, ARD/Checchi agreed to provide this assistance.

*Training in Business Reform Legislation.* In the ARD/Checchi contract, and throughout the implementation of the contract, the Ministry of Justice, USAID and ARD/Checchi had assumed that the training for the judicial, legal and business communities on the laws on which ARD/Checchi had provided technical assistance would be given only on those laws that had been adopted by the National Assembly. As the contract neared its conclusion, it had become increasingly clear that none of the major laws on which assistance had been provided (Companies, Bankruptcy, Secured Transactions and Leasing Laws) would be adopted within the contract's time frame. In negotiations with the Ministry and USAID, it was agreed that the training would be held on those laws in draft, with the emphasis on the underlying legal theories of the draft laws.

*R4 Inputs.* Mr. Reynders provided commentary and additional inputs for the annual USAID R4 submission.



**e. Milestone Completion**

The following table shows those milestone activities under the Final Work Plan that were commenced and/or completed during the Ninth Quarter (July 1-September 30, 2000):

**Business Law Reform**

1.3.05 Creation of a Word-Searchable CD-ROM Compilation of Malagasy Laws (completed in Eleventh Quarter)

1.3.06 Ninth Quarterly Report

**ADR**

2.3.04 Completion and Administration of USAID Grant to CAMM (administration ongoing)

2.3.05 Ninth Quarterly Report

**3. Levels of Effort Provided per CLIN**

**a. Eleventh Quarter**

CLIN #	Max Days	SOW/ Work Order	Description of Work Order	Consultant Name	# of Days
0001-1 Int'l Legal Reform	503	25 32	Legal Information Systems Specialist Law Development Advisor/Project	Pierre Babinsky (Checchi) Thomas Reynders (Checchi)	4.000 9.375
0001-2 Local Legal Reform	505	28 29 29 29	Law Development Advisor Senior Legal Expert Legal Expert Senior Legal Expert	Raphael Jakoba Louis Rajaonera Elisa Razafiniarivo Ratiaray Ramarolanto	1.000 8.000 8.000 2.000
0001-3 Int'l ADR	301	31 31 31	Mediation and Arbitration Trainer Arbitration Trainer Mediation Trainer	Howie Clavier (ARD) Louis Marquis (ARD) Jean Poitras (ARD) Thomas Reynders (Checchi)	24.000 18.000 14.000 7.625
0001-4 Local ADR	171	29 29 28	Legal Expert Senior Legal Expert Senior legal Expert Law Development Advisor	Elisa Razafiniarivo Ratiaray Ramarolanto Louis Rajaonera Raphaël Jakoba	6.000 8.000 11.000 31.300
0001-5 Local Mgt	31				

**b. Cumulative to Date (Quarters One through Eleven)**

CLIN #	Maximum Days	Cumulative Days
0001-1: U.S. Legal Reform	503.0	470.375
0001-2: Local Legal Reform	505.0	353.75
0001-3: U.S. ADR	301.0	247.675
0001-4: Local ADR	171.0	194.25
0001-5: Local Management	31.0	12.000
<b>Totals</b>	<b>1511.0</b>	<b>1278.05</b>
<b>International Experts</b>	<b>804.0</b>	<b>710.05</b>
<b>Local Experts</b>	<b>707.0</b>	<b>560.0</b>

These totals include the figures in the previous table; some LOE figures are estimates based on relevant SOWs.

**4. Legislation Monitoring and Tracking Tables**

**a. Status, Critical Dates and Events of Legislation Reviewed by ARD/Checchi**

	Law/Regulation Name- English/French	Drafting / Comment	CRDA / Other	Further Comment	NA Adoption	Official Publication
1	Arbitration Law / <i>Loi sur l'arbitrage</i>	8/98	9/98		11/11/98	12/21/98
2	Companies Law / <i>Loi sur les sociétés commerciales</i>	9/98	2/01 Adopted by Council of Ministers			
3	Tradesman's Law / <i>Loi sur le statut du commerçant</i>	8/98	9/98		8/2/99	8/16/99
4	Competition Law / <i>Loi sur la concurrence</i>	8/98	9/98			
5	Transparency Law / <i>Loi sur la transparence des entreprises</i>	8/98	9/98		8/19/99	8/30/99
6	Legal Notice for Real Property Mortgages Law / <i>Loi sur l'hypothèque judiciaire provisoire</i>	8/98	9/98		8/19/99	8/30/99
7	Commercial Registry Decree / <i>Décret sur le registre du commerce et des sociétés</i>	8/98	9/98		N/A	1/3/00
8	Bankruptcy Law / <i>Loi sur les procédures collectives d'apurement des passifs</i>	4/99	10/00 Sent to Council of Government	2/00-4/00		
9	Labor Code / <i>Code du travail</i>	6/99	CNE drafting effort suspended	9/99-10/99 3/00		
10	Leasing Law / <i>Loi sur le crédit bail</i>	2/00-4/00	4/01 At Ministry of Finance for review			
11	Secured Transactions / <i>Loi sur les sûretés</i>	9/00	With CRDA			

**b. Business Law Reforms and ARD/Checchi/JURECO Contributions**

The following table describes the significance to the overall business law reform effort in Madagascar of the reformed laws and decrees on which we have provided commentary, along with an analysis of the extent to which the final versions or drafts of those laws and decrees utilized our recommendations. The evolution of legal and regulatory reform is often difficult to quantify, with the final product frequently containing contributions of many persons who have written and spoken (both formally at meetings of Law Reform Commissions, and informally with drafters and policy-makers at various levels) about the subject undergoing reform. This table has been reviewed by both international and local specialists familiar with the reform process and reflects what they consider an accurate statement of the significant effort made by the ARD/Checchi/JURECO specialists.

Law/Regulation Name- English/French	Purpose	Status	ARD/Checchi Activities
Arbitration Law / <i>Loi sur l'arbitrage</i>	Establishes legal framework for arbitration	Adopted and promulgated	Extensive commentary provided, notably on using key UNCITRAL model law principles for international arbitration, including: minimum intervention by judiciary; right of parties to select arbiters; mandatory nature of Arbitral Award. The ARD/Checchi/JURECO contributions had been discussed with proponents of the final version of the law.
Companies Law / <i>Loi sur les sociétés commerciales</i> (including General Partnership Law, Limited Partnership Law, Limited Liability Company Law and Corporations Law)	Defines the legal forms of business enterprises	Adopted by the Council of Ministers, February 12, 2001	Extensive commentary provided, notably on forms of business enterprises, including the benefit of the one-person corporation. Also suggested removal of requirement that ALL incorporators be required to be residents of Madagascar, and insertion of more extensive Corporate Governance principles.  Suggested reference to separate proxy rules for larger enterprises in order to assure informed shareholder input.
Tradesman's Law / <i>Statut du commerçant</i>	Defines what a business is and who may engage in business	Adopted and promulgated	Commentary on inclusion of foreign businesses and technical aspects of draft. Articles 3.1 to 3.7 (dealing with accounting requirements that will clarify and help unify local standards) contributed by ARD/Checchi /JURECO team.
Competition Law / <i>Loi sur la concurrence</i>	Defines fair and unfair competition practices	CRDA action completed but blocked by Ministry of Commerce	Extensive commentary aimed at liberalizing and increasing specificity.
Transparency Law / <i>Loi sur la transparence des entreprises</i>	Specifies the kinds of information that a business make available to the public	Adopted and promulgated	Article 5.4 (on the ability of a sole proprietor to become a part of the registry—and therefore of organized business--) contributed by ARD/Checchi/JURECO team..
Decree on Legal Notice for Personal Property Mortgages / <i>Décret sur la Publicité du Crédit Mobiliier</i>	Provides for public notice of liens on the personal property of business enterprises	Adopted and promulgated	Article 20 (dealing with creating a means of assuring that registrations are kept up-to-date and reviewable, thus making the registry more of a practical tool for the business community, rather than a formal procedure) contributed by ARD/Checchi/JURECO team.

<b>Law/Regulation Name- English/French</b>	<b>Purpose</b>	<b>Status</b>	<b>ARD/Checchi Activities</b>
Commercial Registry Decree / <i>Décret sur le registre du commerce et des sociétés</i>	Establishes commercial register for assuring public notice of on-going acts of business enterprises, including registration of security interests and Credit- Bail transactions.	In force after being published in Official Gazette	Suggestions regarding structure and organization that reinforce the principles suggested by the ARD/Checchi/JURECO team in the related laws and decrees (on Transparency and on Credit Mobiliere--see above): in Articles 5, 28, 58, 59 and 60 there are now provisions on sole proprietors on-going registration requirements, as well as several other requirements to keep the registry up-to-date).
Bankruptcy Law / <i>Loi sur les procédures collectives d'apurement des passifs</i>	Establishes legal framework for commercial enterprises to declare bankruptcy	Action completed by CRDA; under review by the Council of Government	General guidance provided on theory and best international practices. ARD/Checchi now providing further technical assistance during the drafting process.
Labor Code / <i>Code du travail</i>	Provides comprehensive framework for labor/management relations	Being drafted by Conseil National d'Emploi; presently on hold	Extensive technical assistance provided on theory and best international practices. International Labor Law Expert n assisted in preparation of most recent draft. ARD/Checchi/JURECO Labor Mediation specialist contributed several key draft provisions to dispute-resolution portion of the draft that may, if adopted, strengthen the ability of labor mediators to resolve disputes.
Draft Law on Finance Leasing / <i>Projet de loi sur crédit-bail</i>	Improves Legal Framework for Finance Leasing	Action completed by CRDA; under review by the Ministry of Finance	General guidance provided on theory and best international practices. ARD/Checchi now providing further technical assistance during the drafting process.
Draft Law on Secured Transactions / <i>Projet de loi sur le droit des sûretés</i>	Facilitates access to credit through a clear and flexible legal mechanism	Under review by CRDA	Recommendations provide framework for meeting international standards for secured transactions law; consolidation and simplification of the rules makes them more understandable to domestic and foreign users and should provide easier access to credit and related commercial activities.

## **B. FINANCIAL**

Contract Value	\$ 1,614,939.00
Expenditures to Date	\$ 1,159,364.10*
Expenditures in 11 <sup>th</sup> Quarter	\$ 92,005.86*

\* NOTE: These amounts include the expenditures as of April 13, date of the latest ARD/Checchi billing to USAID. Some costs incurred during the 11<sup>th</sup> Quarter are not accounted for in this report: compensation for International Consultants under SOW #31, \$24,640; per diem for International Consultants, \$7,500; April payment to JURECO under SOW #29, 4,663; and April payment to MCI under SOW #28.



## **II. CTO'S COMMENTS**

## **III. CO'S COMMENTS**